

ORDINANCE NO. 03-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, AMENDING CHAPTER 10, SECTION 1479 OF THE CODE OF LAWS OF LEON COUNTY, FLORIDA; PROVIDING FOR NOTICE OF RECEIPT OF A TYPE B SITE PLAN APPLICATION, FOR A WRITTEN PRELIMINARY DECISION OF THE DRC ON THE APPLICATION, AND FOR A POINT OF ENTRY TO REQUEST A QUASI-JUDICIAL HEARING; CREATING CHAPTER 10, SECTION 10-1485.1 OF THE LEON COUNTY CODE OF LAWS; CREATING A PROCEDURE FOR SPECIAL MASTER REVIEW OF TYPE B SITE AND DEVELOPMENT PLANS; AMENDING CHAPTER 10, SECTION 10-1489 OF THE LEON COUNTY CODE OF LAWS; PROVIDING FOR REVIEW OF THE RECOMMENDED ORDER BY THE BOARD OF COUNTY COMMISSIONERS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, that:

Section 1. Chapter 10, Section 10-1479, of the Code of Laws of Leon County, Florida, is

hereby amended as follows:

Sec. 10-1479. Type B review.

Type B review shall be applied to the types of site and development plans listed in Subsections 1 through 7, below. For the purpose of this section, non-residential site and development plans include, but are not limited to, commercial, office, institutional, and industrial development.

1. Properties in the Residential Preservation, Lake Protection, RA, R-1, R-2, R-3, R-4 R-5 and OS Zoning Districts:

(a) Residential site and development plan: Proposed residential site and development plans containing 11 to 49 residential dwelling units.

(b) Additions to or new construction of churches or schools or institutional facilities: Proposed site and development plans for the expansion of existing churches or schools or institutional facilities, or

the construction of new churches, schools, or institutional facilities, containing 5,000 to 24,999 gross building square feet.

(c) Other non-residential uses containing 5,000 to 24,999 gross building square footage.

2. Properties in the Mixed Use A OR-1, OR-2 and C-1, Urban Fringe, Lake Talquin Urban Fringe or Rural Zoning Districts:

(a) Residential site and development plans: Proposed residential site and development plans containing 21 to 149 residential dwelling units.

(b) Non-residential site and development plans: Proposed non-residential site and development plans containing 10,000 to 149,999 gross building square footage.

3. Properties in the OR-3, CM, MR-1, C-2, undeveloped sites in CP (redevelopment sites in CP are addressed in 10-1478), UP-1, UP-2, OA-1, IC, DRI, PUD, and M-1 Zoning Districts:

(a) Residential site and development plans: Proposed residential site and development plans containing 200 to 299 residential dwelling units.

(b) Non-residential site and development plans: Proposed non-residential site and development plans containing 40,000 to 249,999 gross building square footage.

4. Properties in the Activity Center Zoning District:

(a) Residential site and development plans: Proposed residential site and development plans containing 400 to 499 residential dwelling units.

(b) Non-residential site and development plans: Proposed non-residential site and development plans containing 100,000 499,999 gross building square footage.

5. Industrial zoning districts. New or expansion of existing industrial uses or development containing 40,000 to 249,999 square footage.

6. A residential or non-residential site and development plan in any zoning district which has unique location characteristics arising from proximity to existing or approved low density residential development, as determined by the county administrator or designee, or which is proposed on a site with 40 or more percent coverage by conservation or preservation areas as defined by the comprehensive plan.

7. Rural Community Zoning District:

(a) Residential site and development plans: Proposed residential site and development plans containing 11 to 49 residential dwelling units.

(b) Non-residential development plans: Proposed non-residential site and development plans containing 50,000 to 99,000 gross building square footage.

8. MH. New manufactured home parks.

9. Review requirements.

(a) Preapplication: The applicant shall obtain a permitted use verification, as applicable, prior to filing a Type B site and development plan application. The applicant shall schedule an appointment and meet with the county administrator or designee and technical assistance staff to discuss the application, the procedures for review and approval, and the applicable regulations and requirements for the review type. The county administrator or designee shall determine the level of application detail and specific methodologies required for petitions seeking Type B development approval. Interested parties are permitted to attend and participate in the preapplication meeting. Public notice shall be mailed at least five calendar days in advance of the preapplication meeting to the current address (based upon the most current tax rolls in the office of the Leon County Property Appraiser) of each property owner within 500 feet of the project and to neighborhood and business associations.

(b) Application: The applicant shall submit the required site and development plan to the county administrator or designee for distribution to the DRC. Within 10 days after receipt of the application, the County shall mail notice of the application to each property owner within 500 feet of the project site and to all neighborhood and business associations located within the same boundary. The notice must state that an aggrieved or adversely affected person has the right to request a quasi-judicial hearing before a special master appointed by the County, in accordance with Section 10-1485.1 of this Code. The property which is the subject of the site and development plan application shall also be prominently posted with notice of the application.

(c) Determination of completeness: Within ten working days after receipt of the application for site and development plan approval, the director of growth and environmental management or designee shall determine whether the application contains all required information at the required level of detail; and shall advise the applicant of all areas of deficiency. This notification shall specify the additional information and level of detail required in order to meet the requirements of this section. In the event that an applicant fails to submit the required additional information within 30 calendar days of the date of the notice of deficiency, the director of growth and environmental management or designee shall consider the application to be withdrawn. The director of growth and environmental management or designee may grant extensions of up to 30 days at the request of the applicant; provided any such request for an extension is received prior to the expiration of the relevant time period. Upon a determination of completeness, the county administrator or designee shall refer the application to the DRC.

(d) Public notice: Public notice of the DRC meeting shall be given at least five calendar days in advance of the meeting by publication in a newspaper of regular and general circulation in the county. In addition, written notice shall be mailed at least five calendar days in advance of the DRC

meeting to the current address (based upon the most current tax rolls in the office of the Leon County Property Appraiser) of each property owner within 500 feet of the project and to registered neighborhood and business associations. The public notice shall advise such persons of the application, and specify that no testimony may be heard by the DRC at their meeting since it is an administrative review and not subject to quasi-judicial provisions.

(e) DRC meetings: Meetings of the DRC are administrative in nature and not subject to quasi-judicial provisions. No testimony shall be received from any applicant or member of the public during the course of the DRC meeting, although written comments may be provided to the DRC and the meetings shall be open to public attendance. Each member of the DRC is responsible for providing proposed written findings which identify whether a development meets the applicable criteria and standards of this chapter and those imposed by other applicable ordinances, regulations and/or adopted standards of the county. The proposed written findings shall be transmitted to other members of the DRC, the applicant, and made available for public inspection at least one working day prior to consideration by the DRC. The proposed written findings shall be the basis for a recommendation by each DRC member to the DRC as a whole to issue a written preliminary decision to approve, approve with conditions, or deny the application. Absent a written preliminary decision, the DRC may ~~or~~ continue consideration of an application to a date and time certain.

(f) DRC review: The DRC shall review the plans at any scheduled meeting, and shall prepare and submit to the county administrator or designee a written preliminary decision including an itemized list of findings of fact which support the preliminary decision of approval, approval with conditions, or denial of the application; or shall request additional material and data determined to be necessary to undertake the required review and continue its review to a date and time certain. The county administrator or designee shall notify the applicant of the written preliminary decision of the DRC decision within five working days of the decision by the DRC.

(g) The written preliminary decision of the DRC shall include a statement that an aggrieved or adversely affected person may request a quasi-judicial hearing pursuant to paragraph (h) herein.

(h) (g) The written preliminary decision of the DRC shall become the DRC's final decision 15 calendar days after it is rendered unless a person who qualifies as a party, as defined in Article XI of Chapter 10 at Division 9 of this Code, has filed comments in response to Subsection (d), above, and shall also have filed a notice of intent to file a petition for quasi-judicial hearing formal proceedings, together with the filing fee within this time period, and subsequently files within 30 calendar days after the preliminary written decision is rendered, the petition for quasi-judicial hearing formal proceedings, before a special master hearing officer. Failure to file is jurisdictional and will result in a waiver of the hearing. Hearings before Appeals heard by a special master hearing officer will be conducted in accordance with the procedures outlined in Section 10-1485.1. Appeals of the hearing officer's decision shall be reviewable by the Circuit Court. Failure to file is jurisdictional and will result in a waiver of the hearing.

Section 2. Chapter 10, Section 10-1485.1, of the Code of Laws of Leon County, Florida, is hereby created as follows:

Sec. 10-1485.1 Special master proceedings.

(A) Appointment of a special master. From time to time the Board of County Commissioners shall appoint and retain special masters or shall contract with the Florida Division of Administrative Hearings for administrative law judges to conduct quasi-judicial proceedings regarding Type B site and development plan applications. Each special master shall be a licensed attorney with the Florida Bar who has practiced law in Florida for at least five years, and who has experience in land use law, real estate law, local governmental law, or administrative law. None of the special masters or the law firms with which they may be associated shall be representing clients before any agency of the county government or any agency of any municipality in the county during the period in which they serve as special master.

(B) Term, compensation. Each special master appointed and retained by the Board of County Commissioners shall serve at the pleasure of the board and shall be compensated at a rate or rates to be fixed by the board.

(C) Ex parte communication.

(i) No county employee, elected official, or other person who is or may become a party to a proceeding before a special master shall engage in an ex parte communication with the special master. However, the foregoing does not prohibit discussions between the special master and county staff that pertain solely to scheduling and other administrative matters unrelated to the merits of the hearing.

(ii) If a person engages in an ex parte communication with the special master, the special master shall place on the record of the pending case all ex parte written communications received, all written responses to such communications, a memorandum stating the substance of all oral communications received, and all oral responses made, and shall advise all parties that such matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be entitled to do so, but only if such party requests the opportunity for rebuttal within ten days after notice of such communication. If he or she deems it necessary due to the effect of an ex parte communication received by him, the special master may withdraw from the case.

(iii) After the receipt of a petition for quasi-judicial hearing before a special master, no party to the hearing may engage in any ex parte communication with a member of the Board of County Commissioners regarding the pending application for Type B site and development plan or the issues in the pending hearing.

(D) Prohibition from acting as agent or attorney for subject matter. A special master, and any firm

with which he or she is or may become associated, is prohibited for a period of three years, after issuance of the decision on the application which was the subject of a quasi-judicial hearing in which he or she presided, from acting as an agent or attorney on any matter involving property which was the subject of the proceeding in which the special master presided. Violations of this subsection shall be prosecuted in the manner provided by general law.

(E) Timeliness of requests for quasi-judicial hearings and standing determinations. All determinations on the timeliness of petitions and all determinations of standing will be made by the county attorney.

(F) Powers of special masters. The special masters who conduct quasi-judicial proceedings pursuant to this section shall have the powers of hearing officers enumerated in Section 120.569(2)(f), Florida Statutes, as well as the power to compel entry upon the land.

(G) Prehearing requirements. At least 7 days prior to the date set for the hearing, the parties shall exchange a list of names and addresses of witnesses planned to testify at the hearing, and a list of exhibits planned to be introduced at the hearing, as well as produce the physical exhibits for inspection by the parties. Each party is entitled to depose witnesses scheduled to testify at the final hearing.

(H) Hearings.

(i) All hearings shall be commenced within 45 days of the date the written preliminary decision of the DRC was rendered. Requests for continuance by any party, either before or during the hearing, may be considered upon good cause shown.

(ii) All hearings shall be open to the public and shall be advertised in a newspaper of general circulation not less than 14 days prior to the date of the hearing.

(iii) The participants before the special master shall be the applicant, the applicant's witnesses, if any, county staff, and other parties as the term "party" is defined in section 10-1621 of this Code, if any, and witnesses of the parties, if any. Any party who is not the applicant or county staff who participates at the hearing shall leave his or her mailing address with the special master.

(iv) Testimony and evidence shall be limited to matters directly relating to the application and development. Irrelevant, immaterial or unduly repetitious testimony or evidence may be excluded.

(v) All testimony shall be under oath. The order of presentation of testimony and evidence shall be as follows:

a. The party challenging the DRC's written preliminary recommendation and his or her witnesses, if any.

b. The applicant, if not the party challenging the DRC's written preliminary decision, and his or

her witnesses, if any.

c. The county, and his or her witnesses, if any, including county staff.

d. Comments by the public, if any.

(vi) To the maximum extent practicable, the hearings shall be informal. All parties shall have the opportunity to respond, to present evidence and argument on all issues involved which are related to the development order, and to conduct cross-examination and submit rebuttal evidence. During cross examination of witnesses, questioning shall be confined as closely as possible to the scope of direct testimony. The special master may call and question witnesses or request additional evidence as he or she deems necessary and appropriate. To that end, if during the hearing the special master believes that any facts, claims, or allegations necessitate review and response by the applicant, staff, or both, then the special master may order the hearing continued until a date certain. The special master shall decide all questions of procedure and standing.

(vii) The standard of review applied by the special master in determining whether a proposed development order is consistent with the comprehensive plan shall be strict scrutiny in accordance with Florida law.

(viii) The special master shall render a recommended order on the application to the Board of County Commissioners within ten days after the hearing concludes, unless the parties waive the time requirement. The recommended order shall contain written findings of fact, conclusions of law, and a recommendation to approve, approve with conditions, or deny the application. A copy of the recommended order shall be mailed to the party who requested the hearing, the applicant and any other interested member of the public who participated at the hearing.

(D) Action by Board of County Commissioners. Upon receipt of the special master's recommended order, the Board shall take up the matter pursuant to Section 10-1489 of this Code.

Section 4. Chapter 10, Section 10-1489, of the Code of Laws of Leon County, Florida, is hereby amended as follows:

Sec. 10-1489. Hearings before the Appeals to Board of County Commissioners.

(A) The provisions of this section apply to hearings before the Board of County Commissioners to review the recommended order of a special master or hearing officer following a quasi-judicial hearing on a Type B or Type C site and development plan application, pursuant to Sections 10-1479 and 10-1479.1 of this Code, the following appeals:

(1) In the event that a site and development plan review decision has been appealed to the Board of County Commissioners on or before the effective date of this ordinance, but has not been heard by the Board of County Commissioners,

~~(2) Appeals filed after the effective date of this ordinance.~~

(B) Prior to the Board of County Commissioners' hearing to review the recommended order on a site and development plan application review on appeal of a decision on a site and development plan, no party person may communicate with any commissioner regarding the case.

~~(C) All determinations of standing will be made by the county attorney.~~

~~(C) (D)~~ All hearings shall be open to the public and shall be advertised in a newspaper of general circulation not less than 14 days prior to the date of the hearing. Public comment on the recommended order shall be taken prior to the argument by the parties pursuant to subsection (G). Public comment shall be limited to three minutes per person.

~~(D) (E)~~ All hearings will be scheduled within 30 days of receipt of the recommended order and record of the decision being reviewed appealed.

~~(E) (F)~~ The record before the Board of County Commissioners shall consist of the complete record of the proceedings before the special master or hearing officer lower reviewing body.

~~(F) (G)~~ The participants before the Board of County Commissioners shall be the parties applicant, appropriate county staff, and any other party, as that term is defined in section 10-1621, Leon County Code of Laws, who participated at the hearing before the special master or hearing officer lower reviewing body.

~~(G) (H)~~ The applicant shall be limited to a total of 20 minutes to present his or her argument, as shall the county staff. Any other party, as that term is defined in section 10-1621, Leon County Code of Laws, who participated at the hearing before the special master or hearing officer lower reviewing body shall be limited to three minutes to present his or her argument. For good cause shown the chairman may grant additional time.

~~(H) (I)~~ At the conclusion of the hearing, the Board of County Commissioners shall render a decision approving, approving with conditions, or denying the application for site and development plan. The Board may adopt the recommended order as its final order and must include written findings of fact and conclusions of law to support its decision. In its final order, the Board may modify or reject the conclusions of law which are based upon sections of the Leon County Code of Laws, Tallahassee-Leon County 2010 Comprehensive Plan or any other rule, ordinance or law of the County. When rejecting or modifying such conclusion of law, the Board must state with particularity its reasons for rejecting or modifying such conclusion of law and must find that the substituted or modified conclusion of law is more reasonable than that which was rejected or modified. The Board may not reject or modify the findings of fact unless the Board determines from a review of the entire record, and states with particularity in its final order, that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law. If the Board issues a final order approving the application with conditions different from those in the recommended order, it shall state with

particularity in its final order the reasons for requiring additional conditions with citations to the record to support that decision, affirming the decision of the lower reviewing body, reversing the decision of the lower reviewing body, or remanding the case to the lower reviewing body for further consideration. In the event the denial of an application by the lower reviewing body is reversed by the Board of County Commissioners, the lower reviewing body shall be directed to issue an approval of the application.

~~(I)~~ (F) Judicial review. Any person aggrieved by a decision of the Board of County Commissioners on an application under review ~~appeal~~ may challenge the decision in the Circuit Court for the Second Judicial Circuit, but only if the person participated at the hearing. If the aggrieved person decides to challenge the decision, he or she shall file a petition for writ of certiorari with the clerk to the circuit court not later than 30 days after the decision of the Board of County Commissioners is filed with the clerk to the Board of County Commissioners. The record before the circuit court shall consist of the complete record of the proceedings before the Board of County Commissioners.

Section 5. Conflicts. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, except to the extent of any conflicts with the Tallahassee-Leon County 2010 Comprehensive Plan as amended, which provisions shall prevail over any part of this ordinance which is inconsistent, either in whole or in part, with the said Comprehensive Plan.

Section 6. Severability. If any word, phrase, clause, section or portion of this ordinance shall be held invalid or unconstitutional by a court of competent jurisdiction, such portion or words shall be deemed a separate and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 7. Effective Date. This ordinance shall become effective as provided by law.

DULY PASSED AND ADOPTED BY the Board of County Commissioners of Leon County, Florida, this _____ day of _____, 2003.

LEON COUNTY, FLORIDA

By: _____
Tony Grippa, Chairman
Board of County Commissioners

ATTESTED BY:
BOB INZER, CLERK OF THE COURT

By: _____
CLERK

APPROVED AS TO FORM:
COUNTY ATTORNEY'S OFFICE
LEON COUNTY, FLORIDA

By: _____
HERBERT W.A. THIELE
COUNTY ATTORNEY